

ISSUE

Would the publication of a newsletter, by an organization otherwise described in section 501(c)(3) of the Internal Revenue Code, containing the voting records of congressional incumbents on selected issues, in the manner described below, constitute participation or intervention in any political campaign within the meaning of section 501(c)(3)?

FACTS

The organization is exempt from federal income tax under section 501(c)(3) of the Code. The organization engages in a number of different educational and charitable activities. As one of its activities, the organization maintains an office that monitors and reports on legislative, judicial, administrative, and other governmental activities and developments considered to be of important social interest. As part of the office's activities, it distributes a monthly newsletter to interested members and others, who together number only a few thousand nationwide.

The monthly newsletter contains expressions of the organization's views on a broad range of legislative, judicial, and administrative issues it considers significant. In discussing a particular issue, the reader is sometimes encouraged to contact various governmental officials to express his or her views on the issue.

As soon as practical after the close of each congressional session, the organization intends to publish in an issue of its newsletter a summary of the voting records of all incumbent Members of Congress on selected legislative issues important to it, together with an expression of the organization's position on those issues. Each member's votes will be reported in a way which illustrates whether he or she voted in accordance with the organization's position on the issue. The newsletter is politically non-partisan, and will not contain any reference to or mention of any political campaigns, elections, candidates, or any statements expressly or impliedly endorsing or rejecting any incumbent as a candidate for public office. No mention will be made of an individual's overall qualification for public office, nor will there be any comparison of candidates that might be competing with the incumbents in any political campaign. The voting records of all incumbents will be presented and candidates for re-election will not be identified. The newsletter will point out the limitations of judging the qualifications of an incumbent on the basis of a few selected votes and will note the need to consider such unrecorded matters as performance on subcommittees and constituent service.

Publication usually will occur after congressional adjournment and will not be geared to the timing of any federal

election. The newsletter will be distributed to the usual subscribers, and will not be targeted toward particular areas in which elections are occurring.

LAW

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable purposes, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which do not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

Section 1.501(c)(3)-1(c)(3)(i) of the Income Tax Regulations states that an organization is not operated exclusively for one or more exempt purposes if it is an 'action' organization. Section 1.501(c)(3)-1(c)(3)(iii) defines an 'action' organization as an organization that participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The regulations further provide that activities that constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written statements or the making of oral statements on behalf of or in opposition to such a candidate.

ANALYSIS

Whether an organization is participating or intervening, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office depends upon all of the facts and circumstances of each case. Certain 'voter education' activities conducted in a non-partisan manner may not constitute prohibited political activities under section 501(c)(3) of the Code. Other so-called 'voter education' activities, however, may be proscribed by the statute. Rev. Rul. 78-248, 1978-1 C.B. 154, sets forth several situations illustrating when an organization has or has not engaged in prohibited political activities within the meaning of section 501(c)(3).

In Situation 3 of Rev. Rul. 78-248, the organization prepared a questionnaire to all candidates for major public offices that contained questions evidencing a bias on certain issues and made the responses generally available to the public during an election campaign. It was considered to be participating in prohibited political campaign activity. In Situation 4 of Rev. Rul. 78-248, an organization primarily concerned with land conservation matters published a compilation of incumbents' voting records on selected land conservation issues and widely distributed it to the electorate during an election campaign. It was held that by concentrating on a narrow range of issues and widely distributing the publication among the electorate during an election campaign,

the organization was participating in a prohibited political activity.

In this case the format and content of the publication are not neutral, since the organization reports each incumbent's votes and its own views on selected legislative issues and indicates whether the incumbent supported or opposed the organization's view. On the other hand, the voting records of all incumbents will be presented, candidates for reelection will not be identified, no comment will be made on an individual's overall qualifications for public office, no statements expressly or impliedly endorsing or rejecting any incumbent as a candidate for public office will be offered, no comparison of incumbents with other candidates will be made, and the organization will point out the inherent limitations of judging the qualifications of an incumbent on the basis of certain selected votes by stating the need to consider such unrecorded matters as performance on subcommittees and constituent service.

In view of the foregoing, other factors must be examined to determine whether in the final analysis the organization is participating or intervening in a political campaign.

In the instant case, the organization will not widely distribute its compilation of incumbents' voting records. The publication will be distributed to the organization's normal readership who number only a few thousand nationwide. This will result in a very small distribution in any particular state or congressional district. No attempt will be made to target the publication toward particular areas in which elections are occurring nor to time the date of publication to coincide with an election campaign.

In view of these facts, Situations 3 and 4 of Rev. Rul. 78-248 are distinguishable from the present case, and the organization will not be considered to be engaged in prohibited political campaign activity.

HOLDING

The publication of a newsletter, by an organization otherwise described in section 501(c)(3) of the Code, containing the voting records of Congressional incumbents on selected issues, in the manner described above, will not constitute participation or intervention in any political campaign within the meaning of section 501(c)(3).

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 78-248 is amplified.